

and such amendment has become effective.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498-1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 79t(a), 77sss(a), 80a-37)

[47 FR 11438, Mar. 16, 1982]

§ 230.415 Delayed or continuous offering and sale of securities.

(a) Securities may be registered for an offering to be made on a continuous or delayed basis in the future, *Provided*, That:

(1) The registration statement pertains only to:

(i) Securities which are to be offered or sold solely by or on behalf of a person or persons other than the registrant, a subsidiary of the registrant or a person of which the registrant is a subsidiary;

(ii) Securities which are to be offered and sold pursuant to a dividend or interest reinvestment plan or an employee benefit plan of the registrant;

(iii) Securities which are to be issued upon the exercise of outstanding options, warrants or rights;

(iv) Securities which are to be issued upon conversion of other outstanding securities;

(v) Securities which are pledged as collateral;

(vi) Securities which are registered on Form F-6 (§ 239.36 of this chapter);

(vii) Mortgage related securities, including such securities as mortgage backed debt and mortgage participation or pass through certificates;

(viii) Securities which are to be issued in connection with business combination transactions;

(ix) Securities the offering of which will be commenced promptly, will be made on a continuous basis and may continue for a period in excess of 30

days from the date of initial effectiveness;

(x) Securities registered (or qualified to be registered) on Form S-3 or Form F-3 (§ 239.13 or § 239.33 of this chapter) which are to be offered and sold on a continuous or delayed basis by or on behalf of the registrant, a subsidiary of the registrant or a person of which the registrant is a subsidiary; or

(xi) Shares of common stock which are to be offered and sold on a delayed or continuous basis by or on behalf of a registered closed-end management investment company or business development company that makes periodic repurchase offers pursuant to § 270.23c-3 of this chapter.

(2) Securities in paragraphs (a)(1) (viii) through (x) may only be registered in an amount which, at the time the registration statement becomes effective, is reasonably expected to be offered and sold within two years from the initial effective date of the registration.

(3) The registrant furnishes the undertakings required by Item 512(a) of Regulation S-K (§ 229.512 of this chapter).

(4) In the case of a registration statement pertaining to an at the market offering of equity securities by or on behalf of the registrant:

(i) The offering comes within paragraph (a)(1)(x);

(ii) Where voting stock is registered, the amount of securities registered for such purposes must not exceed 10% of the aggregate market value of the registrant's outstanding voting stock held by non-affiliates of the registrant (calculated as of a date within 60 days prior to the date of filing);

(iii) The securities must be sold through an underwriter or underwriters, acting as principal(s) or as agent(s) for the registrant; and

(iv) The underwriter or underwriters must be named in the prospectus which is part of the registration statement.

As used in this paragraph, the term *at the market offering* means an offering of securities into an existing trading market for outstanding shares of the same class at other than a fixed price on or through the facilities of a national securities exchange or to or through a

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market maker otherwise than on an exchange.

(b) This section shall not apply to any registration statement pertaining to securities issued by a face-amount certificate company or redeemable securities issued by an open-end management company or unit investment trust under the Investment Company Act of 1940 or any registration statement filed by any foreign government or political subdivision thereof.

(Secs. 6, 7, 10, 19(a), 48 Stat 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77f, 77g, 77j, 77s(a))

[48 FR 52896, Nov. 23, 1983, as amended at 59 FR 43470, Aug. 24, 1994]

§ 230.416 Securities to be issued as a result of stock splits, stock dividends and anti-dilution provisions and interests to be issued pursuant to certain employee benefit plans.

(a) If a registration statement purports to register securities to be offered pursuant to terms which provide for a change in the amount of securities being offered or issued to prevent dilution resulting from stock splits, stock dividends, or similar transactions, such registration statement shall, unless otherwise expressly provided, be deemed to cover the additional securities to be offered or issued in connection with any such provision.

(b) If prior to completion of the distribution of the securities covered by a registration statement, additional securities of the same class are issued or issuable as a result of a stock split or stock dividend, the registration statement shall, unless otherwise expressly provided therein, be deemed to cover such additional securities resulting from the split of, or the stock dividend on, the registered securities. If prior to completion of the distribution of the securities covered by a registration statement, all the securities of a class which includes the registered securities are combined by a reverse split into a lesser amount of securities of the same class, the amount of undistributed securities of such class deemed to be covered by the registration statement shall be proportionately reduced. If paragraph (a) of this section is not applicable, the registra-

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tion statement shall be amended prior to the offering of such additional or lesser amount of securities to reflect the change in the amount of securities registered.

(c) Where a registration statement on Form S-8 relates to securities to be offered pursuant to an employee benefit plan, including interests in such plan that constitute separate securities required to be registered under the Act, such registration statement shall be deemed to register an indeterminate amount of such plan interests.

[30 FR 13824, Oct. 30, 1965, as amended at 55 FR 23923, June 13, 1990]

§ 230.417 Date of financial statements.

Whenever financial statements of any person are required to be furnished as of a date within a specified period prior to the date of filing the registration statement and the last day of such period falls on a Saturday, Sunday, or holiday, such registration statement may be filed on the first business day following the last day of the specified period.

[22 FR 2328, Apr. 9, 1957]

§ 230.418 Supplemental information.

(a) The Commission or its staff may, where it is deemed appropriate, request supplemental information concerning the registrant, the registration statement, the distribution of the securities, market activities and underwriters' activities. Such information includes, but is not limited to, the following items which the registrant should be prepared to furnish promptly upon request:

(1)(i) Any reports or memoranda which have been prepared for external use by the registrant or a principal underwriter, as defined in Rule 405 (§ 230.405), in connection with the proposed offering;

(ii) A statement as to the actual or proposed use and distribution of the reports or memoranda specified in paragraph (a)(1)(i) of this section, identifying each class of persons who have received or will receive such reports or memoranda and the number of copies distributed to each such class;